

§ 15A-1008. Dismissal of charges.

(a) When a defendant lacks capacity to proceed, the court shall dismiss the charges upon the earliest of the following occurrences:

- (1) When it appears to the satisfaction of the court that the defendant will not gain capacity to proceed.
- (2) When as a result of incarceration, involuntary commitment to an inpatient facility, or other court-ordered confinement, the defendant has been substantially deprived of his liberty for a period of time equal to or in excess of the maximum term of imprisonment permissible for prior record Level VI for felonies or prior conviction Level III for misdemeanors for the most serious offense charged.
- (3) Upon the expiration of a period of five years from the date of determination of incapacity to proceed in the case of misdemeanor charges and a period of 10 years in the case of felony charges.

(b) A dismissal entered pursuant to subdivision (2) of subsection (a) of this section shall be without leave.

(c) A dismissal entered pursuant to subdivision (1) or (3) of subsection (a) of this section shall be issued without prejudice to the refile of the charges. Upon the defendant becoming capable of proceeding, the prosecutor may reinstitute proceedings dismissed pursuant to subdivision (1) or (3) of subsection (a) of this section by filing written notice with the clerk, with the defendant, and with the defendant's attorney of record.

(d) Dismissal of criminal charges pursuant to this section shall be upon motion of the prosecutor or the defendant or upon the court's own motion. (1973, c. 1286, s. 1; 2013-18, s. 5.)